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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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BOARD OF TRUSTEES OF THE
LABORERS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS VACATION-HOLIDAY
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA; and
BOARD OF TRUSTEES OF THE
LABORERS TRAINING AND RETRAINING
TRUST FUND FOR NORTHERN
CALIFORNIA,

Plaintiffs,

vs.

CORBIN BUILDING, INC., a Nevada
suspended/forfeited corporation

Defendant.

Case No.:

**COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING
AGREEMENT; TO RECOVER UNPAID
TRUST FUND CONTRIBUTIONS AND
FOR A MANDATORY INJUNCTION**

Now comes the Plaintiffs, hereinabove named, and for their causes of action against Defendant, allege as follows:

I. JURISDICTION AND VENUE

1. This is an action for damages for breach of the collective bargaining agreement described below, for recovery of unpaid trust fund contributions, for breach of fiduciary duty and for injunctive relief. This Court has jurisdiction of the action under and pursuant to the provisions

1 of 29 U.S.C. §185 (§301 of the Labor Management Relations Act of 1947, as amended) and
 2 29 U.S.C. §§1132(a)(3) and 1132(e)(1) (§§502(a)(3) and 502(e)(1) of the Employee Retirement
 3 Income Security Act of 1974, as amended) (“ERISA”). The suit arises from defendant Corbin
 4 Building, Inc.’s failure to make trust fund contributions as required by its collective bargaining
 5 agreement, by the written trust agreements, and by provisions of federal law.

6 **II. INTRADISTRICT ASSIGNMENT**

7 2. Venue of the within action is properly laid in the U.S. District Court for the
 8 Northern District of California in that, under ERISA §502(e)(2), 29 U.S.C. §1132(e)(2),
 9 contributions are made to, and benefits are paid from, a corporate co-trustee bank in the Northern
 10 District of California.

11 **III. PARTIES**

12 3. The Laborers Health and Welfare Trust Fund for Northern California, Laborers
 13 Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund for Northern
 14 California, and Laborers Training and Retraining Trust Fund for Northern California are the
 15 Plaintiffs herein. The Laborers Health and Welfare Trust Fund for Northern California, Laborers
 16 Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund for Northern
 17 California, and Laborers Training and Retraining Trust Fund for Northern California (“the Trust
 18 Funds”) are trust funds organized under and pursuant to the provisions of §§302(c)(5) and
 19 302(c)(6) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §§186(c)(5)
 20 and 186(c)(6). The Trust Funds were established through collective bargaining agreements
 21 between the Northern California District Council of Laborers and employer associations
 22 representing construction industry employers doing business in Northern California. The Trust
 23 Funds are employee benefit plans created by written trust agreements subject to and pursuant to
 24 §§3(3) and 3(37) of ERISA, 29 U.S.C. §§1002(3) and (37). The Boards of Trustees, as fiduciaries,
 25 are the plaintiffs, who sue on behalf of the Trust Funds.

26 4. Each of the Trust Funds is a third party beneficiary of the collective bargaining
 27 agreement described below.

1 5. At all times mentioned herein, each of the Trust Funds was an express trust created
2 by a written trust agreement subject to and pursuant to § 302 of the Labor Management Relations
3 Act, 29 U.S.C. §186, and a multi-employer benefit plan within the meaning of §§3 and 4 of
4 ERISA, 29 U.S.C. §§1002, 1003.

5 6. The Trust Funds provide a variety of benefits for laborers, retired laborers, and
6 other related covered employees on whose behalf contributions are made pursuant to collective
7 bargaining agreements. The duties of the Board of Trustees of the Trust Funds include ensuring
8 that employers who are signatories to said collective bargaining agreements comply with the
9 terms of those agreements with respect to payments and contributions to the Trust Funds.

10 7. Plaintiffs are informed and believe, and upon that ground allege, that at all times
11 material hereto, defendant Corbin Building, Inc. (“Corbin Building”) was a Nevada corporation,
12 now suspended/forfeited, and was doing business as a general contractor with its principal place
13 of business located in Oakland, California. Plaintiffs are further informed and believe, and upon
14 that ground allege, that defendant Corbin Building, at all relevant times, is and has been an
15 employer within the meaning of §3(5) and §515 of ERISA, 29 U.S.C. §§1002(5), 1145 and an
16 employer in an industry affecting commerce within the meaning of §301 of the LMRA, 29 U.S.C.
17 §185.

18 **IV. FIRST CLAIM FOR RELIEF**

19 **(Breach of Collective Bargaining Agreement)**

20 8. Plaintiffs reallege and incorporate by reference, as though fully set forth, the
21 allegations contained in paragraphs 1-7 of this Complaint.

22 9. On or about July 31, 2012, Corbin Building executed a Memorandum Agreement
23 with the Northern California District Council of Laborers. By virtue of his execution of the
24 Memorandum Agreement, Corbin Building became bound to a written collective bargaining
25 agreement with the Northern California District Council of Laborers (“Laborers Union”) entitled
26 the Laborers’ Master Agreement For Northern California (“Master Agreement”). In agreeing to
27 be bound to the Master Agreement, defendant agreed to be subject to and bound by all provisions
28 and conditions of the written Trust Agreements which established the trust funds. Pursuant to the

1 provisions of the Master Agreement, defendant agreed to be bound by all terms relating to wages,
2 hours and conditions of employment prescribed therein with the Laborers Union.

3 10. By virtue of the Master Agreement and written trust agreements, defendant
4 promised and agreed that: (1) it would pay employee fringe benefit contributions into each Trust
5 Fund in regular monthly installments commencing on or before the 15th day of the month
6 immediately succeeding the month in which the employee's work was performed; (2) that in the
7 event that any of said monthly installments were not paid in full on or before the 25th day of the
8 month in which such contributions became due, it would pay interest on the delinquent
9 contribution in the amount of 1.5% per month until paid in full, and would also pay the amount
10 of \$150 for each delinquent contribution as liquidated damages, and not as a penalty; and (3) that
11 if any suit with respect to any of said contributions or payments were filed against it, it would pay
12 into said Trust Funds the attorneys' fees, costs and all other expenses incurred in connection with
13 such suit.

14 11. The Master Agreement between the Laborers Union and Corbin Building has
15 never been terminated.

16 12. Plaintiffs have performed all conditions, covenants and promises on their part to
17 be performed in accordance with the terms and conditions of the Master Agreement and Trust
18 Agreements.

19 13. Within four years last past, defendant materially breached and broke the aforesaid
20 Master Agreement and trust agreements in the following respects:

- 21 (a) by failing to report and failing to pay (not reported, not paid) pursuant to
22 an audit conducted on or about December 21, 2015, all employee fringe
23 benefit contributions on behalf of his covered employees for the period
24 May, September - December 2013; January 2014; and March 2015, in the
25 principal amount of \$9,938.05.
- 26 (b) by failing to pay interest and liquidated damages on the unreported and
27 unpaid employee fringe benefit contributions (not reported, not paid) for
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the period May, September – December, 2013; January 2014; and March 2015, in an amount according to proof at trial.

14. The aforesaid material breaches proximately caused damages to plaintiffs in the following approximate amounts, all according to proof at trial: for unpaid contributions (not reported, not paid) pursuant to audit, in the principal amount of \$9,938.05 plus interest and liquidated damages according to proof at trial. Interest will continue to accrue at the rate of 1.5% each month during the pendency of this lawsuit.

15. Plaintiffs have incurred and will continue to incur attorneys' fees in the within action. Pursuant to the provisions of the Master Agreement and the trust agreements, Plaintiffs request that the Court award plaintiffs their attorneys' fees and costs incurred in the bringing of the within action.

WHEREFORE, plaintiffs pray for judgment as set forth below.

V. SECOND CLAIM FOR RELIEF

(Recovery of Unpaid Trust Fund Contributions)

(ERISA §§502(g)(2), 515)

16. Plaintiffs reallege and incorporate by reference, as though fully set forth, the allegations contained in paragraphs 1-15 of this Complaint.

17. ERISA §515, 29 U.S.C. §1145, requires defendant to make such contributions to the plaintiffs Trust Funds as are required under the terms of his collective bargaining agreement with the Union. Pursuant to the provisions of their trust agreements, plaintiffs are entitled to enforce defendant's obligations to make those contributions.

18. Based on the audit performed by plaintiffs on or about December 21, 2015, defendant Corbin Building failed to report, and failed to pay (not reported, not paid) all employee fringe benefit contributions for the period May, September – December 2013; January 2014; and March 2015, in the principal amount of \$9,938.05. Defendant is further obligated by the provisions of the Master Agreement and the Trust Agreements to pay interest on unpaid contributions at the rate of 1.5% per month until paid and liquidated damages in the amount of

1 \$150 for each month that defendant failed to timely report and pay all employee fringe benefit
2 contributions into each Trust Fund.

3 19. Pursuant to the provisions of ERISA, §502(g)(2), 29 U.S.C. §1132(g)(2), plaintiffs
4 are entitled to the following statutory relief:

- 5 (a) Section 502(g)(2)(A): for unpaid contributions pursuant to audit (not
6 reported, not paid) in the principal amount of \$9,938.05, according to proof
7 at trial;
- 8 (b) Section 502(g)(2)(B): for contributions not reported and not paid, an award
9 of interest on the unpaid fringe benefit contributions at the rate of 1.5% per
10 month, from the date of the delinquency, until the date of judgment,
11 calculated to be \$10,442.68 through October 25, 2018; and
- 12 (c) Section (g)(2)(C): the additional award of an amount equal to the greater
13 of (i) interest on the unpaid fringe benefit contributions at the rate of 1.5%
14 per month, from the date of the delinquency, until the date of judgment or;
15 (ii) liquidated damages under the Master Agreement and trust agreements
16 of \$150 for each month that defendant failed to timely report and pay all
17 employee fringe benefit contributions into each Trust Fund, calculated to
18 be \$10,442.68 through October 25, 2018.

19 20. Plaintiffs have incurred and will continue to incur attorneys' fees in the within
20 action. Pursuant to the provisions of §502(g)(2)(D) of ERISA, 29 U.S.C. §1132(g)(2)(D),
21 plaintiffs request that the Court award plaintiffs their attorneys' fees and costs incurred in the
22 bringing of the within action.

23 WHEREFORE, plaintiffs pray for judgment as set forth below.

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1 **VI. THIRD CLAIM FOR RELIEF**

2 **(Mandatory Injunction)**

3 **(ERISA §502(g)(2)(E))**

4 21. Plaintiffs reallege and incorporate by reference, as though fully set forth, the
5 allegations contained in paragraphs 1-20 of this Complaint.

6 22. Pursuant to the terms and conditions of the Master Agreement and Trust
7 Agreements, defendant is required to allow the Trust Funds access to its books and records to
8 determine the amount of trust fund contributions due and owing. Plaintiffs have, as one of their
9 purposes, the obligation to ensure that contributions required to be made to the Trust Funds are
10 fully and correctly made. The purposes of the respective funds are to provide health and welfare,
11 vacation, pension and other benefits for laborers, retired laborers and other related covered
12 employees on whose behalf contributions are made, which benefits are supported by such
13 contributions, and to ensure that employers who are signatories to the collective bargaining
14 agreement referred to herein comply with the terms of the agreement with respect to the payment
15 of contributions to the Trust Funds.

16 23. Pursuant to ERISA §502(g)(2)(E), 29 U.S.C. §1132(g)(2)(E), the Court may award
17 such other legal or equitable relief as the Court deems appropriate, and pursuant to ERISA
18 §502(a)(3), 29 U.S.C. §1132(a)(3), plaintiffs are entitled to obtain appropriate equitable relief for
19 the breaches alleged herein. Plaintiffs seek a mandatory injunctive order of this Court ordering
20 and requiring defendant Corbin Building to allow plaintiffs' auditor access to its books and
21 records to permit plaintiffs to verify the precise amounts owed by defendant to the Trust Funds
22 for the period October 2015 through the last completed quarter prior to entry of judgment.

23 24. Plaintiffs seek a mandatory injunctive order from this Court because plaintiffs have
24 no adequate legal remedy in that an audit of the books and records of defendant is the only means
25 to accurately verify the additional amounts owed by defendant to the Trust Funds.

26 WHEREFORE, plaintiffs pray for judgment as follows.
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RELIEF REQUESTED

1. On the First Claim for Relief, for damages for breach of the collective bargaining agreement for judgment against defendant as follows: (a) for unpaid contributions pursuant to audit (not reported, not paid) in the principal amount of \$9,938.05 plus interest and liquidated damages according to proof at trial; and (b) for such other or further amounts as may be shown at trial, for costs of suit, attorneys' fees and for such other further relief as the Court may deem just and proper.

2. On the Second Claim for Relief, for recovery under ERISA §502(g)(2), 29 U.S.C. §1132(g)(2), for judgment against defendant as follows: (a) under Section 502(g)(2)(A) - for unpaid contributions (not reported, not paid) in the principal amount of \$9,938.05, according to proof at trial; (b) under Section 502(g)(2)(B) – an award of interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the date of delinquency, until the date of judgment, calculated to be \$10,442.68 through October 25, 2018; (c) under Section 502(g)(2)(C) – the additional award of an amount equal to the greater of (i) interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the date of delinquency, until the date of judgment; or (ii) liquidated damages under the Master Agreement and trust agreements of \$150 for each month that defendant failed to timely report and pay all employee fringe benefit contributions into each Trust Funds, calculated to be \$10,442.68 through October 25, 2018; and (d) such other or further amounts as may be shown at trial, for costs of suit, attorneys' fees and for such other further relief as the Court may deem just and proper.

3. On the Third Claim for Relief, that defendant be compelled to forthwith submit to an audit of its books and records by an auditor selected by plaintiffs, which audit is to be conducted at the premises of defendant during business hours, at a reasonable time or times, and to allow said auditor to examine and copy such books, records, papers and reports of defendant that are relevant to the enforcement of the collective bargaining agreement and trust agreements, including, but not limited to, the following for the period of October, 2015 through the last completed quarter prior to entry of judgment:

1 Individual Earnings Records (Compensation/Payroll); W-2/W-3
2 Forms; 1096 and 1099 Forms; Reporting Forms for all Trust Funds;
3 State DE-7, DE-6, DE-9, DE-9C Tax Reports; Worker's
4 Compensation Insurance Monthly Reports; Sub-Contractor
5 Invoices; Employee Timecards; Payroll Journal; Quarterly Payroll
6 Tax Returns/Form 941; Check Register and Supporting Cash
7 Vouchers; Form 1120/1040 or Partnership Tax Returns; General
8 Ledger (portions relating to payroll); and any other records
9 necessary to determine if all hours audited have been paid to any
10 Trust Fund.

11 DATED: November 14, 2018

12 BULLIVANT HOUSER BAILEY PC

13 By 
14 Ronald L. Richman

15 Attorneys for Plaintiffs

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